



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 20/2014

Paul Scicluna

vs

L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell ta' Paul Scicluna tal-1 ta' April 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Marzu 2014 ghal PA 5455/09 'sanzjonar ta' zvilupp ta' farmhouse kif mibni inkluz swimming pool u tnehhija ta' paving eccessiv madwar il-pool ezistenti';

Kopja Informali ta' Sentenza

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tad-9 ta' Dicembru, 2009 – Full Development Permission – PA 05455/09 fejn l-appellant, f' Razzett Lara, Triq Wied' il-Ghasri, Ghasri, talab:

“To sanction as built farmhouse including swimming pool and removing of excess paving around pool area Ghasri – Gozo ”

Permezz ta' rifjut mahrug fit-9 ta' Mejju, 2012, l-Awtorita' dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"1. The site lies outside the limits for development defined in Maps 14.4-A of the Gozo and Comino Local Plan and so it is located in an area which should remain undeveloped and open. The sanctioning of the building runs counter to this scheme and represents unacceptable urban development in the countryside which runs counter to Policy GZ-LMDZ-1 of the Gozo and Comino Local Plan.

2. The sanctioning of the building leads to the creation of a new dwelling unit outside the limits to development and thus runs counter to Policy GZ-RLST-5 of the Gozo and Comino Local Plan.

3. The existing building conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan.

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4. The proposed development runs counter to the Development Control Guidance – Developments Outside Built up Areas (1995), and in particular to paragraphs 8.2(iii) and 8.2(viii) in that a new dwelling unit is being created.

5. Structure Plan Policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The sanctioning of the building would detract from this, and so it would conflict with Structure Plan Policy RCO 4.

6. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of regulation 14 of Legal Notice 514 of 2010. The illegal development consists of the unauthorised paving around the swimming pool.

7. The proposal runs counter to the Development Control Policy – Swimming Pools Outside Development Zone (January 2000), in particular to paragraph 5.1 which specifies that the development shall be adequately screened through appropriate landscaping. Accepting this development would prejudice the main objective of this Development Control Policy which aims at containing the spatial spread of development, minimising the take-up of land, and limiting the extent of visual intrusion Outside Development Zone."

Permezz tal-appell tieghu l-Perit Mintoff ressaq l-aggravji tal-appellant kif gej:

"I write on behalf of my client, Mr. Paul Scicluna, with reference to the refusal of application PA/05455/09, to request the Appeals Board to reverse the MEPA's decision and approve the aforementioned proposal. Kindly be informed that my client's lawyers, as well as myself, would like to be present during the deliberation of the appeals.

The reasons for refusal are listed hereunder:

1. The site lies outside the limits for development defined in Maps 14.4-A of the Gozo and Comino Local Plan and so it is located in an area which should remain undeveloped and open. The sanctioning of the building runs counter to this scheme and represents unacceptable urban development in the countryside which runs counter to Policy GZ-LMDZ-1 of the Gozo and Comino Local Plan.

2. The sanctioning of the building leads to the creation of a new dwelling unit outside the limits to development and thus runs counter to Policy GZ-RLST -5 of the Gozo and Comino Local Plan.

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3. The existing building conflicts with Structure Plan Policy SET11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan.
4. The proposed development runs counter to the Development Control Guidance - Developments Outside Built up Areas (1995), and in particular to paragraphs 8.2(iii) and 8.2(viii) in that a new dwelling unit is being created.
5. Structure Plan Policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The sanctioning of the building would detract from this, and so it would conflict with Structure Plan Policy RCO 4.
6. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of regulation 14 of Legal Notice 514 of 2010. The illegal development consists of the unauthorized paving around the swimming pool.
7. The proposal runs counter to Development Control Policy - Swimming Pools Outside Development Zone (January 2000), in particular to paragraph 5.1 which specifies that the development shall be adequately screened through appropriate landscaping. Accepting this development would prejudice the main objective of this Development Control Policy which aims at containing the spatial spread of development, minimizing the take-up of land, and limiting the extent of visual intrusion Outside Development Zone.

I avail myself of this opportunity to address the aforementioned issues hereunder.

In the first instance, it is pertinent to note that the approval of this application would not imply the creation of a new dwelling unit as is being alleged in the second and forth reasons 10r refusal. Conversely, the existing farmhouse, previously the subject of the application bearing reference PA/02674/92, is completely legal and does not require sanctioning, as confirmed in reason for refusal six ('The illegal development consists of the unauthorized paving around the swimming pool']. The current application proposes the sanctioning of a minor internal alteration to the building approved in PA/02674/92, namely the construction of a partition wall subdivided two internal spaces, as well as the pool and a small area of hard paving.

Our submission requests permission to remove extensive areas of external paving and replace this space with soft landscaping. Although the pool area is adequately screened, my client is happy to incorporate further greenery in order to provide additional screening and comply with any and all specifications designated by the Development Control Policy - Swimming Pools Outside Development Zone (January 2000).

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Since the application does not incorporate the intensification of development, the first and third reasons for refusal have no basis and should not be considered to be valid. Moreover, contrary to what is stated in reason for refusal number five, the scenic value of the area shall, in no way, be affected by the sanctioning of the removal of areas of hard landscaping and the retention of the pool. In fact, the approval of this application shall serve to contribute further landscaping to the site via the replacement of hard paving with green areas.

In light of the above, I graciously ask the Appeal's Board to consider the actual context of the existing scenario and reverse the MEPA's decision to refusal this application.”

Permezz tar-rapport taghha l-Awtorita' ressqet il-kummenti taghha kif gej:

"5.2.1 Preliminary point of view

On a preliminary point, the Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal, as the request for sanctioning in this application does not incorporate all illegalities on site and hence the provisions of Article 14 of LN 514/10 are applicable. Article 14 (1) of LN 514/10 clearly states that where illegal development is present on a site, new development on that same site will not be considered unless it is regularized.

The farmhouse on site is not covered by a valid permit and is not a pre-1967 structure and therefore it is wholly illegal.

Furthermore the site forms part of a larger area which is subject to enforcement notice ECF961/00. This enforcement notice is relative to permit PB2674/92 (issued for an extension to an adjacent building – see Document 17 in file PB2674/92) and is for the “unauthorized internal alterations and construction of swimming pool”. The Enforcement Directorate noted that the building covered by PB2674/92 has been subject to interventions which are not covered by permit PB2674/92. These include the unauthorized extensions, the division of this same building into 4 separate dwelling units, internal alterations and the construction of swimming pool (see approved Drawings PA2674/92/1B/1C in relative file and 1994 aerial image Document 69B in file PA5455/09). The building subject to the current application (PA5455/09) is one of the resultant unauthorized residential units.

Further to the above, reference to the 1967 survey sheet and 2008 aerial photo shows that a small room and a reservoir/pond have also been constructed without permit.

5.2.2 Residential development ODZ

Therefore, contrary to what the appellant is stating this 'dwelling unit' has been constructed without any planning consent in that:

- No permissions for the construction of the building were issued;
- The 1988 aerial photo show that the building did not exist at this time and appears for the first time in the 1994 aerial photo.

D. As already outlined, permit PB2474/92 refers to the adjacent site. The building under consideration is shown on the approved drawings relating to this permit (PA2674/92/1B/1C in relative file) but clearly does not form part of the proposal.

Therefore, the proposal is not being considered in terms of alterations of a rural building but in terms of the creation of a new dwelling ODZ which is in breach of Local Plan Policy GZ-RLST-5. The development on site also runs counter to the general strategy for rural areas expressed in Structure Plan policies SET 11, SET 12, and RCO2 which only allow structures or facilities essential to agricultural, ecological or scenic interests in such areas. Clearly, the proposal does not fall within one of these categories of development. In this regard, the proposal also conflicts with Local Plan Policy GZ-LMDZ-1.

This residential development on site is to be seen in relation to the other adjacent dwelling units (resulting from the subdivision of the unauthorized extensions and interventions as per ECF961/00) which have resulted in intensification of residential land-use ODZ especially at the expense of agricultural land, also adversely impacting on the site and its wider setting.

It is therefore apparent that there is no apparent justification for this residential unit why it cannot be located within designated urban areas. Allowing the sanctioning of this residence, would consolidate such a land-use ODZ and is likely to result in a precedent for the similar developments neighboring this property

5.2.3 Visual considerations

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5.2.3.1 Scale & design of dwelling

The dwelling is abutting third party walls and lies at a lower level from the street level. Photos at Document 1A (in file PA5455/09) show that the front door is at a setback from the street alignment and does not retain the original height of the boundary walls abutting the street. The openings of the building overlook an open area ODZ and are visible from long distance particularly from the area across the valley on the northern side. The proposal does not include any mitigation measures to screen the building. The setback at the entrance of the dwelling is not considered as an appropriate parking provision for a dwelling ODZ. Also, this unauthorized dwelling has a footprint / floorspace of 195sqm that is exceeding the maximum allowable floorspace of 150sqm specified in Policy PLP 20.

The layout, design, massing of the building and lack of landscaping to screen the building are not considered to fit within the rural character of the area. The construction of a new building in an area which should remain undeveloped and open, however, is still considered to create an unacceptable visual impact, in conflict with Structure Plan Policy RCO4 and local plan policy GZ-RLCN-1, particularly within an area of high landscape value.

5.2.3.2 Swimming pool

The lack of landscaping also fails to screen the swimming pool. In this respect, the swimming pool does not comply with the requirements of the Policy for Swimming Pools ODZ (2000) in that the proposal does not provide adequate landscaping to screening the development from the open countryside.

Therefore, with regards to the appellants argument that "the scenic value of the area shall in no way be affected by the sanctioning of the removal of areas of hard landscaping and the retention of the pool. In fact, the approval of this application shall serve to contribute further landscaping to the site via the replacement of hard landscaping with the green areas" it should be noted that the concerns relating to visual impact / formalization do not relate solely to the present landscaping. The mass (195sqm) of this dwelling unit (and the adjacent unauthorised residences) are disturbing the rural landscape characterising this site. The development is in fact overlooking the agricultural fields sited that the northern area."

Permezz ta' ittra l-Perit Mintoff irrisponda f' isem l-appellant kif gej:

"I write on behalf of my client, Mr. Paul Scicluna, with reference to the Malta Environment and Planning Authority report dated 21st June 2012.

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We would like to bring to your attention several issues regarding your reasons for refusal of the above-mentioned application.

1. In the first instance, it is relevant to note that the approval of this application would not imply the creation of a new dwelling unit as is being alleged in the report point 5.2.1. Conversely, the existing farmhouse, previously the subject of the application bearing reference PA 2674/92, is completely legal and does not require sanctioning.

2. With reference to 5.2.2 points 1 and 2 in your letter, according to the latest submitted plans, it is evident that the building is not subject to sanctioning with the exception of an internal wall subdividing two internal areas from each other. We adhere to the fact that the existing dwelling/farmhouse has been approved with a permit application bearing the reference number: PA/2674/92/1B.

3. With reference to 5.2.2 point 3, although the site lies outside the limits of development, the proposed pool area will retain its openness due to the nature of the development to be sanctioned. The pool does not exceed the ground level and thus will not affect the openness of the site.

4. Regarding point 5.2.3.1 and 5.2.3.2, our submission requests permission to remove extensive areas of external paving and replace this space with soft landscaping. Although the pool area is adequately screened, my client is happy to incorporate further greenery in order to provide additional screening and comply with any and all specifications designated by the Development Control Policy – Swimming Pools Outside Development Zone (January 2000).

5. Furthermore, with regards point 5.2.3.1, the area of the dwelling is as in the approved drawings.

6. With reference to point 5.2.3.2 in your letter, we are ready to accept any conditions with regards to adequate screening through appropriate soft landscaping.

We therefore kindly request you to take the necessary steps to reconsider your decision on the above-mentioned criteria.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba, full development application, ghas-sanzjonar ta' zvilupp ta' farmhouse ezistenti u t-tnehijja ta' paving eccessiv madwar il-pool ezistenti.

Skond l-Awtorita':

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- is-sit mertu ta' dan l-appell jinsab fil-kampanja bejn l-Ghasri u z-Zebbug u qieghed ODZ u huwa 'listed for scheduling' bhala Level 3 Valley System u Buffer Zone u kif ukoll Area of High Landscape Value;
- Jezisti Enforcement Notice (ECF 961/00) fuq is-sit in ezami li jghid : 'the site is relative to development permission granted in PA 2674/92. From a site inspection carried out, it resulted that additions were made to the old building being divided into four dwellings, internal alterations and construction of swimming pool. No application or appeal from notice is pending on site. Case is being referred for Direct Action. Application PA 5455/09 submitted on part of site'.

Din l-applikazzjoni giet rifjutata peress li:

- Is-sit jinsab ODZ u s-sanzjonar tal-bini jkun jikser il-policy GZ-LMDZ-1 tal-pjan lokali;
- Is-sanzjonar tal-bini jwassal ghall-kreazzjoni ta' residenza gdida u ghalhekk il-proposta tikser il-policy GZ-RLST-5 tal-pjan ta' struttura;
- Il-proposta tikser il-policy SET 11 tal-pjan ta' struttura, il-PLP 20 u partikolarment paras 8.2(iii) u 8.2(viii)
- Il-proposta tikser id-Development Control Policy – Swimming Pools Outside

Development Zone (January 2000) u in partikolari para 5.1;

- L-izvilupp propost li jinsab gewwa Rural Conservation Area imur kontra l-policies RCO 4 tal-pjan ta' struttura; u
- Il-proposta tikser ir-regulation 14 tal-LN 514 tal-2010.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

Fl-appell tieghu l-appellant jissottometti li:

- Approvazzjoni ta' din l-applikazzjoni ma' tkunx timplika l-kreazzjoni ta' residenza gdida;
- Il-farmhouse ezistenti li hija koperta bl-applikazzjoni PA 2674/92 hija legali u m'ghandhiex bzonn sanctioning kif konfermat mir-reason for refusal number 6;
- Din l-applikazzjoni qed titlob is-sanzjonar ta' hajt intern li jaqsam spazju fi tnejn fil-bini approvat bil-permess PA 2674/92 u kif ukoll pool u area ta' paving;
- L-appellant ser inehhi hafna mill-paving u jekk ikun il-bzonn lest li jzid l-area ta' soft landscaping;
- L-applikazzjoni ma' zzidx l-intensifikazzjoni ta' bini fis-sit u ma' taffettwax is-scenic value tas-sit;

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Fir-rapport taghha l-Awtorita' tibda biex tressaq eccezzjoni preliminari fis-sens li skond l-Awtorita' dan it-Tribunal ma' jistax jisma u jiddeciedi fuq dan il-kas peress li l-applikazzjoni ghas-sanzjonar in ezami ma' tinkludix l-illegalitajiet kollha li jezistu fuq is-sit in ezami u ghalhekk japplika l-Artiklu 14 tal-LN 514/10.

Fuq dan l-awtorita' tispjega l-illegalitajiet fid-dettal kif gej:

- Il-farmhouse ezistenti m'hiex koperta b' permess validu u m' hiex 'pre-1967 structure' u ghalhekk hija kompletament illegali;
- Is-sit jifforma parti minn sit akbar li kien suggett ghal enforcement notice (ECF 961/00) li kien ikopri l-permess PA 2674/92 u li kien hareg ghal estensjoni ta' bini adjacenti. Skond l-Enforcement Division il-bini kopert bil-permess PA 2674/92 ghandu diversi addizzjonijiet li m'humix koperti bil-permess u partikolament il-kreazzjoni ta' erbgha residenzi illegali. Il-bini li huwa s-suggett ta' din l-applikazzjoni huwa biss wahda minn dawn l-erbgha residenzi;
- In fatti skond l-aerial photo tal-1988 dan il-bini ma' kienx jezisti f'dak iz-zmien u deher ghall-ewwel darba fl-aerial photo tal-1994. Qatt ma' inhargu permessi ghal dan il-bini;
- Izjed minn dan skond is-survey sheets relattivi fis-sit inbnew ukoll kamra u pool/pond bla permess.

L-Awtorita' tkompli fil-mertu billi tikkonferma dawk ir-reasons for refusal li jidhlu fil-kwistjonijiet ta' ppjanar u tidhol izjed fid-dettal biex tkompli tispjeghom.

Fir-risposta ghal dan ir-rapport l-appellant naqas milli jittratta b'mod konvincenti imqar wiehed mid-diversi punti li qajment l-Awtorita' li huma ta' entita serja biex spjegat fid-dettal ghaliex, fl-opinjoni tal-Awtorita', il-bini ezistenti huwa kompletament illegali. In fatti l-appellant jerga jirrepeti l-argumenti pjuttost superficiali u bla sustanza li kien qajjem fl-appell. Oltre minn dan l-appellant ma' jsemmi xejn dwar il-kamra u r-reservoir/pond li inbnew fuq is-sit in ezami wara l-1967.

Apparti minn dan meta wiehed ihares lejn l-aerial photos li hemm fil-file tal-applikazzjoni jirrizulta bl-izjed mod car li l-bini in ezami ma' kienx jezisti fl-1988.

F'dawn il-kazi jigifieri meta jkunu jezistu irregolaritajiet fuq is-sit in kwistjoni, l-applikant, skond l-Artikolu 14(1) tal-LN 514/10, huwa obbligat li jew inehhi l-istess qabel ma' japplika jew inkella jinkludi talba ghas-sanzjonar taghhom fl-applikazzjoni.

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Ghalhekk, kif jirrizulta mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, il-proposta in ezami tikser numru ta' policies tal-Pjan Strutturali kif ukoll tal-Artikolu 14(1) tal-LN 514/10, u ghalhekk dan l-appell ma jirrizultax fondat u ma' jimmeritax konsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut mahrug mill-Awtorita' tal-applikazzjoni PA 05455/09, " To sanction as built farmhouse including swimming pool and removing of excess paving around pool area Ghasri – Gozo "

Ikkunsidrat

L-aggravji tal-appellant li huma kollha fuq kwistjonijiet ta' ligi deciza mit-Tribunal huma s-segwenti:

1. Ghalkemm it-Tribunal qal li l-proposta tmur kontra numru ta' policies tal-pjan strutturali, ma didentifikax dawn il-policies li ma jippermettix tali zvilupp;
2. Id-decizjoni hi bbazata fuq interpretazzjoni zbaljata tal-artikolu 14 tal-Avviz Legali 514/10 peress li dan jispecifica permess ghal zvilupp gdid mhux sanzjonar ta' illegalitajiet.

It-tieni aggravju

Dan l-aggravju ghandu jigi mistharreg qabel l-ewwel wiehed peress illi hu ta' natura preliminari u toqot il-mertu tal-azzjoni fis-sens illi toqtol kull kunsiderazzjoni fil-mertu tal-applikazzjoni jekk ir-ragunament tat-Tribunal hu fondat.

It-tezi tal-appellant hi li l-artikolu citat cioe l-artikolu 14 tal-Avviz Legali 514/2010 jitkellem dwar permess ghal zvilupp mhux sanzjoni ta' irregolaritajiet u ghalhekk mhux applikabbli. Ghalkemm l-appellant isemmi interpretazzjoni hazina tal-artikolu l-Qorti qed tqisha bhala allegazzjoni ta' applikazzjoni hazina tal-Avviz Legali ghal mertu in kwistjoni.

It-Tribunal fost ir-ragunijiet pro u kontra l-validita tal-applikazzjoni jasal ghal konkluzzjoni illi l-permess PA 2674/92 ma jkoprix il-binja in kwistjoni u dan wasal ghaliha billi mill-aerial

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photos fil-file tal-applikazzjoni jidher car illi l-bini lanqas kien jezisti fl-1988. Isostni wkoll illi l-argumenti tal-appellant ma xejjinx l-argument tal-Awtorita illi s-sit jiffirma parti minn sit akbar li kien suggett ghal enforcement notice 961/2000 li kien ikopri l-permess PA 2674/92 u li kien hareg ghal estenzjoni ta' bini adjacenti. Skond l-enforcement division il-bini kopert bil-permess PA 2674/92 ghandu diversi addizjonijiet li mhumiex koperti bil-permess partikolarment il-krejjazzjoni ta' erba' residenzi illegali. Il-bini suggett ghal din l-applikazzjoni hu wiehed minnhom. Permess fuq din il-binja partikolari qatt ma nhareg.

Oltre dan it-Tribunal innota illi f'din l-applikazzjoni ma jissemma' xejn dwar sanzjonar ta' reservoir/pond li inbnew fuq is-sit wara l-1967 u li ma ghandhomx permess. Billi dawn ma jirrizultax f'din l-applikazzjoni japplika d-dispost tal-artikolu 14(1) tal-Avviz Legali 514/2010.

Is-sottomissjoni tal-appellant hi li t-Tribunal naqas li jikkonsidra li dan mhix 'zvilupp gdid' kif irid l-artikolu 14(1). Dan l-artikolu jghid hekk:

Minghajr preġudizzju għall-artikolu 70 u għas-Sitt Skeda li tinsab mal-Att, meta zvilupp ezistenti fuq is-sit ikun ghal kollox jew biss f'parti illegali, l-Awtorità ghandha tirrifjuta applikazzjoni għall-izvilupp li jkollha x'taqsam ma' zvilupp gdid fuq dak is-sit, kemm-il darba li l-izvilupp illegali jkun inkluz ghal sanzjonar u l-izvilupp illegali jkun konformi mal-policies attwali.

Izda għall-finijiet ta' dan ir-regolament, kull zvilupp li jaqa' taht Kategorija B tat-Tmien Skeda ta' l-Att ma ghandux jitqies bhala zvilupp illegali.

Dan l-artikolu fil-fehma tal-Qorti jrid jinqara mal-artikolu 14(2) ghal interpretazzjoni shiha tieghu. Dan l-artikolu jghid hekk:

L-izvilupp illegali jista' jew jiġi regolarizzat permezz ta' applikazzjoni specifika ta' zvilupp ghal dak l-iskop biss, jew permezz ta' applikazzjoni ta' zvilupp li tinkludi is-sanzjonar ta' zvilupp illegali, kif ukoll proposti godda ta' zvilupp.

Dan l-artikolu fiz-zewg subartikoli fil-fehma tal-Qorti jpoggi f'perspettiva gusta z-zewg tipi ta' applikazzjonijiet, wahda ta' sanzjonar biss ta' zvilupp kollu jew in parte illegali u ohra ta' sanzjonar flimkien ma' proposti godda ta' zvilupp. L-artikolu 14(1) qed jitkellem in generali dwar proposti ta' zvilupp gdid flimkien ma' sanzjonar ta' zvilupp ezistenti kollu jew in parte

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illegali u t-tieni subartikolu jerga' jaqsam l-applikazzjoni f'wahda semplicement sanatorja tal-izvilupp illegali biss u ohra sanatorja u proposti godda ta' zvilupp.

Il-kaz li ghandha quddiemha l-Qorti ma tirrigwardax proposti ta' zvilupp gdid ma' sanzjoni ta' zvilupp illegali izda sanzjonar tal-bini kollu gia ezistenti kollu kemm hu illegali. Kwindi l-artikolu 14(2) hu aktar applikabbli mill-artikolu 14(1). Pero dan ma ghandux iwassal ghan-nullita tad-decizjoni ghax l-artikolu ikkwotat hu dak gust cioe l-artikolu 14 pero l-kaz kien wiehed li ghalih japplika l-principju regolatur tal-artikolu 14(1) pero l-applikazzjoni specifika taqa' taht it-tieni subinciz. Madankollu l-artikolu hu wiehed u z-zewg subincizi ghandhom jinqraw flimkien ghal interpretazzjoni korretta tal-hsieb tal-legislatur.

Ghalhekk dan l-aggravju qed jigi michud.

L-ewwel aggravju

Dan l-aggravju jolqot il-mertu u din il-Qorti ma tistax tidhol fih minhabba li ma intlaqax it-tieni aggravju. Hu minnu illi t-Tribunal ikkunsidra l-mertu pero fic-cirkostanzi la darba t-Tribunal ikkonstata illi l-applikazzjoni ma kinitx tolqot l-irregolaritajiet kollha u ghalhekk l-applikazzjoni ma setghetx kollha tigi michuda fuq bazi procedurali, messu waqaf hemm kif qed taghmel din il-Qorti. Jista' jkun illi l-appellant ghandu ragun li jilmenta mill-manjiera kif gie deciz il-mertu izda la darba l-appell gie stronkat fuq procedura, l-aggravju fuq il-mertu ma jistax jigi kunsidrat min din il-Qorti.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Paul Scicluna, tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Marzu 2014. Spejjez ghall-appellant.

< Sentenza Finali >

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